INDEX

Discussion of the Motion 1

Statement of the Case—Reply 6

Response to "Authorities" 14

Conclusion 22

Certificate of Service 24

Table of Cases

Baggett v. *Bullitt*, 377 U.S. 360, 12 L.ed. 2d 377 17

City of Meridian v. *Southern Bell Telephone and Telegraph Company*, 358 U.S. 639, 3 L.ed. 2d 562 4

Dombrowski v. *Pfister*, ... U.S. ....., 14 L.ed. 2d 22 20

England v. *Louisiana Medical Examiners*, 375 U.S. 411, 11 L.ed. 2d 440 5

Government Employees v. *Windsor*, 353 U.S. 364, 1 L.ed. 2d 894 20

Griffin v. *School Board of Prince Edward County*, 377 U.S. 281, 12 L.ed. 2d 256 15

Louisiana Power and Light Co. v. *Thibodeaux*, 360 U.S. 25, 3 L.ed. 2d 1058 4

Railroad Commission v. *Pullman Co.*, 312 U.S. 496, 85 L.ed. 971 17

United States v. *Fox*, 94 U.S. 315, 24 L.ed. 192 22

Annotations, 3 L.ed. 2d 1827; 94 L.ed 879 18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 180

W. S. TATUM, ET AL.,
Petitioners,

vs.

JOE B. SINGER, ET AL.,
Respondents.

REPLY BRIEF OF RESPONDENTS UPON MOTION FOR ABSTENTION

DISCUSSION OF THE MOTION

This case is before the Supreme Court of the United States and on the Docket of said Court only by virtue and reason of the request of Petitioners (W. S. Tatum, *et al.*) seeking the grace of this Court, asking that the decision of the Supreme Court of the State of Mississippi, adverse to said Petitioners, concerning the ownership and title to an interest in lands lying in the State of Mississippi (mineral interest) be reviewed by this Court, through the issuance of its Writ of Certiorari and that said cause be reversed, on some supposed federal question, which an examination

of the record (not yet printed so as to be available for reference by page number there) will and does plainly reveal to be non-existent.

After Petitioners are confronted with the plain (even obvious) and total insufficiency of their position and petition for Certiorari they reverse their stand, and ask this Court, by a totally unfounded and unsupportable procedure, unique and foreign to the rules and procedures before this Court, to *stop* consideration of their Petition for Writ of Certiorari which got here, and could only have gotten here, on the basis of the alleged violation of some right of Petitioners contrary to law and involving a *federal* question. By the motion now filed Petitioners seek to have this Court *"abstain"* from even considering the granting of a Writ of Certiorari in this case, and make the suggestion (unsupported by logic, equity, justice or law) that this case should be held in suspense and abeyance to await the filing of a new case in a different State to try anew the questions that Petitioners have already required to be tried and decided by the Mississippi Courts.

Having selected the Mississippi tribunal to establish their land title, and having compelled the defendants, Respondents here, to come into the Mississippi Court to litigate, and having lost their cause, for plain, simple and compelling reasons, as given in detail in the opinion of the Supreme Court of Mississippi (so clear and plain, in fact, that the trial judge was reversed, for obvious error in his decision) Respondents filed their petition for a Writ of Certiorari in this Court, seeking a review of the Mississippi decision. But now, upon further reflection, they repudiate that petition and ask this Court to abstain from doing that which they sought by their Petition for Certiorari. They seek to start all over again, in the Louisiana Courts to try to get a decision there, relative to title to lands in

Mississippi, which they may suppose or hope, but can hardly expect, might be favorable, and then, if it were favorable they would ask this Court to ignore the Mississippi decision, and *not* review it under Writ of Certiorari, but by some as yet unknown method, neither by Certiorari or Appeal, nor involving a Federal question, reach a decision in favor of the said Petitioners (after additional years of delay).

In the beginning Respondents point out that it is indispensable to any understanding of the Motion here or the issues involved in this case that the decision of the Supreme Court of Mississippi be read and considered. That opinion is found in the Appendix "A" of the printed Petition for Writ of Certiorari filed herein by Petitioners, on pages A1 through A35. In that opinion it is pointed out that the mineral reservation in the deed in question involves at least five (5) different references to the *mineral* reservation, while Petitioners in the motion for abstention here represent (or misrepresent) that there is only one, and as to that one they insist that "oil, mineral, gas and petroleum" does not cover or include anything other than "oil, gas and petroleum" (thus eliminating *mineral*). This is not only a contradiction of the decision of the Supreme Court of Mississippi, but it has no relation to a federal question, or abstention.

An ancient adage most appropriate to Petitioners here is that "There are none so blind as those who will not see". The real determination of the Supreme Court of Mississippi has not been recognized by Petitioners, because they shut their eyes to it. That Court took the very authorities presented to it by Petitioners and weighed and adjudged their rights by the asserted legal principles they offered, and that Court concluded beyond any doubt that petitioners did not own the title to the minerals (any min-

erals) in the Mississippi lands, as to the particular area in dispute.

Again, in this Motion for Abstention, etc., the two cited cases, upon which it is based refer to the *Federal* trial court, not the appellate court, which was called upon to abstain. It is unwarranted for a party to call on a Court to exercise jurisdiction in the first place and then, before the case is presented, to ask it to abstain. Petitioners go to extremes in suggesting that they are in any position to ask an appellate Court to "abstain" from reviewing a case wherein the appellant was the party who asked the trial court to take jurisdiction and proceed to a *conclusion* in the first place.

The first case, mentioned in this Motion for Abstention, etc., of *City of Meridian* v. *Southern Bell Telephone and Telegraph Company*, 358 U.S. 639, 3 L.ed. 2d 562, concerned a case originally filed in the Federal District Court which involved a decision holding a particular state statute to be in conflict with both the State and Federal Constitutions and this was affirmed by the Court of Appeals. This Court vacated the judgment and sent the case back to the District Court, there to await a state court decision. Since that case involved both state and federal constitutional questions, it bears no resemblance to the case at bar, where no State statute or constitutional question was or is involved, and where no real federal question of any sort was or is involved.

The second case mentioned in the Motion to Abstain, etc., of *Louisiana Power and Light Co.* v. *Thibodeaux*, 360 U.S. 25, 3 L.ed. 2d 1058, involved a petition for expropriation by the City of land and property of the power company. Defendant, a Florida corporation, removed the case from the Louisiana State Court where it was filed, to the Federal District Court. The District Judge stayed the

proceeding "until the Supreme Court of Louisiana has been afforded an opportunity to interpret . . ." the pertinent state statute. The case likewise has no resemblance to the case at bar. Here there has not been any question of Louisiana law or statute, or any statute. Petitioners chose (necessarily) the Mississippi forum to decide their title question as to Mississippi lands, having nothing to do with any statute, or any constitution or federal question. Petitioners go no further than to say that they are anxious to obtain "a determination in the Courts of Louisiana as to what was the true reservation". But this desire is not supported by a single citation of any authority from Louisiana indicating Louisiana would decide one whit different from the Mississippi decision. Petitioners merely indicate a desire to litigate from state to state in the hope (without even attempting to show a reasonable expectation) of a favorable decision.

The third case mentioned in this Motion for Abstention, etc., of *England* v. *Louisiana Medical Examiners*, 375 U.S. 411, 11 L.ed. 2d 440, is not of any support to the motion. The decision shows plainly that "abstention" has nothing to do with a case filed in the State Court which does not involve any Federal question or any matter of procedure that involved a federal or constitutional question of any sort.

In the case at bar there was not, and is not, any question of the competence of the State of Mississippi to determine all issues presented. Further this England case effectively and finally disposes of the position of Petitioner in the following words (from headnote 8), to-wit:

> ". . . We now explicitly hold that if a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, and has them decided there, then—whether or not be seeks

> direct review of the state decision in this Court—he has elected to forego his right to return to the District Court. . . ."

In the case at bar Petitioners freely and without reservation submitted all its case to the Mississippi Court, and thereby elected to forego aught else. They have had their day in Court, where they sought it. Having lost they desire to try elsewhere. This is beyond the realm of Justice, reason or law, and contrary to this case cited in the very motion.

STATEMENT OF THE CASE—REPLY

On Page 2 of this Motion for Abstention, etc., and the supporting brief, there appears the title "Statement of the Case". The first paragraph thereof is without support in the record before this Court on the Petition for Writ of Certiorari. It is an Ex Parte statement of matters not in evidence and not thought of by any party to this cause so far as the record shows. Again, in speaking of the reservation of "oil, mineral, gas and petroleum" only, in their deed, Petitioners are not presenting merely a "half-truth" but rather a "one-fifth" truth, there being at least four other paragraph references to "mineral" *reservations* in the deed in question. But, all the reservations have been construed against Petitioners by the Supreme Court of Mississippi on a simple question of the meaning of the words of a deed—not involving any federal question, or constitutional question, or statute, but a Mississippi land title question only.

Next there follow some eight lettered subdivisions under the heading "Reasons for This Motion" (pages 2-9 of brief). The first reason under subdivision (a) contains a partial quotation of the deed which Petitioners brought

into the Mississippi courts and as to which they sought a construction of meaning. They have left out other references to the *mineral reservation* contained in this deed. They say that the Order of Judge Byrnes (of the Louisiana Court) was not attached (to show authorization of their deed by the Louisiana Court) and in this they even failed to show, the validity of their alleged surface title. Petitioners allege that they appropriated gravel from the lands in question. But this is without support in the record. The record does not show that Petitioners even took so much as one load, or one shovel of gravel from these lands. There was some taking of an uncertain amount of gravel, at odd intervals, by some county officials, and payment made (erroneously) to Petitioners.

On page 4 of their brief Petitioners say the Mississippi Supreme Court opinion "made express reference to such appropriations". Indeed it did, and what that reference said was one of the things which totally defeated the claim of Petitioners. The Court said:

> ". . . Insofar as the claim of adverse possession on the part of Mr. Tatum, his heirs and successors is concerned, the record wholly fails to establish the basic requirements essential to create title by adverse possession in the appellees to the minerals other than hydrocarbons for the statutory period of time, irrespective of whether or not the statute of limitations could run against this property for the alleged reason that it was in custodia legis. . . ."

Subdivision (b) on Page 4 of their brief states that Petitioners were in possession continuously of the land. But that was of the surface *only*.

Subdivision (c) on the same page, recites the sale to Respondents of "100% Mineral Interest" in the lands in question, which is exactly right. Petitioners did continue

in undisturbed possession—but of the *surface*, not the minerals.

Next, Petitioners add some ex parte, off the record, comments about the alleged or supposed situation on *June 14, 1965*. This was some time *after* the filing of the Petition for the Writ of Certiorari herein, and some 26 months after the making of the trial court record on which this case is based. The unsupported comment about what *Louisiana officials may think* shows that Petitioners have gone entirely outside the record, even since the final decision of the Supreme Court of Mississippi herein, and have been seeking to cast a cloud on that decision which they evoked by their very suit in Mississippi (which is the best place a Mississippi land title question could be determined, of course). All this comment in their brief by Petitioners is purely ex parte, and in attempted subversion of the Mississippi decision, at a time Petitioners were seeking the grace of this Court by asking for review under their petition for the Writ of Certiorari. It is apparent that these late efforts were made in obvious recognition that Petitioners had no standing whatever in this Court to obtain a Writ of Certiorari, much less of having a successful disposition of their cause by this Court upon a hearing on the merits.

Petitioners finally say they are now anxious to determine what the local law of the State of Louisiana may be. But in the case before this Court they were "anxious" to determine what the Mississippi law was concerning their title, and they are bound thereby. Petitioners have not yet cited any Louisiana case or other authority which would indicate at all that the Louisiana law is different from the Mississippi law, and this again leaves them without any standing to suggest to this Court that there would be a different result, even if all the other impediments were not in their way to prevent a new trial in a different state,

after seeking trial of the issue in Mississippi and having lost.

In their subdivision (d) Petitioners complain that the State of Mississippi did that very thing which Petitioners besought it to do in the first place, and invoked its jurisdiction to do, to-wit, to construe the deed in question. The very original complaint filed to begin this case, was in reliance on an alleged deed said to be valid and authorized by the Louisiana authorities. Petitioners are the ones who submitted to the Mississippi Court the questions decided against them.

In subdivision (e) Petitioners again suggest that the Supreme Court of Mississippi "reformed" the deed and mineral reservations in question. Again without authority, reason, logic or law to support them.

In subdivision (f) Petitioners accuse the Mississippi Supreme Court of a "clear mis-statement of the record". That accusation is not well taken, nor is it supported, or supportable. No single word of the record is pointed out as being that which was mis-stated. Nor is the alleged mis-statement quoted. But there is a clear mis-statement in the paragraph of the brief of Petitioners (page 6 subdivision (f)) wherein Petitioners charge:

> ". . . the Supreme Court of Mississippi assumed to assert that the right of Petitioners was divested through the order of the Civil District Court authorizing the deed to Tatum. . . ."

No such assumption was made, and it does not so appear. Nothing was, has been or is divested from Tatum by virtue of any order or any decision of court. Petitioners simply refuse to see that which would be clear if they would only look. The plain and simple truth and fact, readily seen by the Court, is that Tatum was never *in-*

vested with any mineral interest in the lands in dispute. The Louisiana authorities clearly recognized this in later expressly conveying "100% Mineral Interest" (See Petition for Writ of Certiorari, page 25) in subject lands to Respondent's predecessor. The Supreme Court of Mississippi did not purport to divest anything from Tatum or his successors, the Petitioners here. They never had the minerals in question and there was and could be no "divesting".

Strange also, Petitioners complain that the order of the Louisiana Court as to the deed to Tatum (their own deed) does not appear in the record. This means nothing less than that there is no title even to the *surface* of the lands in question vested in Petitioners because the alleged and purported deed to Tatum was not shown to be authorized by the Louisiana Court.

So it is, on the record made by Petitioners, on the trial of their case in the Mississippi Court they selected, they have failed totally to prove any right in subject lands, even as to the surface, because of their failure to produce the record of the order that was needed to support their title. Accordingly, since the deed to the Singer predecessor conveyed all that Hibernia owned, Respondents can claim the surface also, on the basis of the record made. The Supreme Court of Mississippi did not purport to dispose of the surface, however, nor of the minerals, but merely adjudged that Respondents acquired the minerals in subject lands by their deed, and that Petitioners' claims thereto should be cancelled.

Next, on page 7 of their brief Petitioners appear to *cite and quote* their own discredited argument, made to the Supreme Court of Mississippi on their Suggestion of Error as some authority here! They suggest, as in several other places in their brief, that the four words, "oil, gas, mineral and petroleum" (which is an erroneous quotation

in itself, since "mineral" should be the second word) are to be, or were, eliminated from the deed. This is nothing short of preposterous, for Petitioners themselves, and the Supreme Court of Mississippi as well, *expressly* recognized that oil, gas or petroleum were plainly and clearly intended, by those words. But the truth of the matter is that Petitioners are the ones who seek to *eliminate* from the said deed this word *"mineral"*, as one of the words of exception; and wholly ignore the four other specific references in said deed to *"mineral reservations"* and *"mineral rights reserved"*. Petitioners, in their partial quotation of the deed in question, in their brief, page 3, have evaded a fair disclosure to this Court in their said Motion for Abstention, etc., by stopping their quotation with the *last word preceding* the true exception. The very *next three words* following the first partial paragraph of quotations on page 3 of said brief are as follows:

"(except: (a) Certain mineral reservations;. . .)"

Those *"mineral reservations"* mentioned in the granting paragraph of the said deed, together with all the rest of said deed, were adjudged by the Supreme Court of Mississippi to be just that, to-wit: *"Mineral reservations"* of all mineral rights as to the portion of the subject lands here in dispute.

So, nothing is further from reality in this controversy than the suggestion that either *oil, mineral, gas* or *petroleum* has been eliminated from the specific exception, written four other times as well in said deed, as to *minerals*.

Petitioners suggested in their Suggestion of Error, as quoted here by them, that the four words "oil, gas, mineral and petroleum" were eliminated from their deed. This position was not deemed worthy of comment by the Su-

preme Court of Mississippi, since the Suggestion of Error filed by Petitioners was overruled without opinion.

In subdivision (g) Petitioners suggest that when the Louisiana Courts have the original deed, the Collateral agreement and the Order authorizing the original deed before it, then it can decide this case, and no Federal question will be involved. Well, how is it to be supposed the Louisiana Court will have such order authorizing the deed, or have the collateral agreement before it, when Petitioners did not present said Order to the Mississippi Court, and strenuously objected to introduction of the collateral agreement which they now ask to have before another court.

Petitioners concede (page 8) that if the order of the Louisiana Court, authorizing the Tatum deed, of December 30, 1937, were before this Court on the record, it would present "serious difficulties" for them. But now they rely on something that is *not here*, hoping it may not present "serious difficulties" if it might, by this unique proceeding, get here through some sort of proceeding in the Louisiana Court.

Still Petitioners have offered no intimation of any authority, statute, case, or other, that would suggest or intimate the Louisiana Court would reach any different conclusion from that already decided by the Mississippi Supreme Court.

Next, in subdivision (h) of their brief, Petitioners demonstrate again the futility (well nigh an outright confession) of their Petition for Writ of Certiorari. They speculate that if they should go into the Louisiana Courts, and they say "If the Supreme Court of Louisiana holds under Louisiana law . . .", something different from the Supreme Court of Mississippi, then the Supreme Court of Mississippi will be compelled to conform. But, from start to finish,

Petitioners have not cited a single authority of any sort to indicate or intimate that there is any reason or basis to suppose there would be a different decision by the Supreme Court of Louisiana, even if this fantastic proposed procedure might be condoned or permitted.

This Motion for Abstention asks this Court to give Petitioners the relief of permitting another trial in another Court, and then to endorse what they hope may be the decision of the Courts of Louisiana. But even a casual reading of the decision of the Mississippi Supreme Court (pages A1 through A35 of Appendix "A" to the printed copy of Petition for Writ of Certiorari herein) demonstrates that the Mississippi Court relied upon the plain and unquestioned acts of the Louisiana Court in its construction of the deed in question. All this was upon the application of Petitioners themselves. Incidentally, after they had received the deed in controversy, they went back to the State of Louisiana and through the Louisiana District Court's approval and order they obtained a lease on oil, gas, *sulphur* and *other minerals*, containing a royalty provision specifically relating to "other minerals, other than oil, gas and casinghead gas", and a separate royalty provision as to *sulphur*. See page A11 of Appendix "A" of the Petition for Writ of Certiorari as filed by Petitioners herein.

How can Petitioners now seriously represent to this Court that the Supreme Court of Louisiana, some *twenty five (25) years* later, is going to repudiate the ownership by the State Banking Department, then and there (as Liquidators of Hibernia) of that which its District Court treated and recognized as being owned by said Hibernia Bank & Trust Company in Liquidation, and being temporarily leased to Tatum (Petitioners' predecessor) himself. A reading of the last paragraph on said page A11 actually sets this case to rest on all possible issues, in favor of Respondents.

Surely, there should be no longer delay in a termination of this cause, which has been a pending case since December 19, 1962, the date same was instituted (page A1 of Appendix "A" to Petition for Writ of Certiorari).

If it were permitted to litigants to hold up their Petition for Certiorari in this Court while they went to another State Court to relitigate, every time there is a case involving the laws of two, or even three or four states, the orderly procedures of times past would be a shambles and confusion would be confounded in this great Court.

RESPONSE TO "AUTHORITIES"

On page 10 of the brief of Petitioners there is mention of how A. Clayton James has expressed himself, referring to page 2 where it is asserted that A. Clayton James, and others concurred in the present contention of Petitioners (he appearing to be Louisiana State Bank Commissioner). What this may have to do with this case does not appear. But it does appear that said A. Clayton James has recanted from his original concurrence, and through his attorney's letter (page 25 of Petitioners' brief) now confesses that he does not know what was the intention of the parties as to the lands in question, in 1937, and recognizes that the Supreme Court of Mississippi has disposed of the question.

The Meridian and Louisiana Power & Light Company cases quoted by Petitioners, pages 10 and 11 of their brief, as above mentioned herein, have no relevancy to the case at bar, since no federal or constitutional question has here been raised in the Motion, nor any new or unusual state question, nor any State statutory question. Respondents have no quarrel with the principles of law involved in any of the cases cited by Petitioners. But those cases do not show or indicate that the doctrine of abstention has any-

thing to do with, or application to, a situation as the case at bar where Petitioners chose the local Mississippi forum and elected to try their cause there, to its final conclusion.

The nearest possible citation that might have some pertinency here, if this were a case where *"abstention"* might be an applicable doctrine (though it is far from it), is *Griffin* v. *School Board of Prince Edward County,* 377 U.S. 281, 12 L.ed. 2d 256 (page 8 of Petitioners' brief) wherein this Court held that the Supreme Court of Appeals of Virginia by passing on the state law with respect to all issues, placed the case beyond the realm of any application of the doctrine of "abstention." Here, the decision of the Mississippi Supreme Court has likewise determined this controversy by passing on the state law or laws involved, there being not even a hint of federal question or any state statute before that court. Nor is there any federal question before this Court on the Petition for Writ of Certiorari filed by Petitioner, in truth and fact.

In the case at bar there is not any reason shown or alleged as to why this Court should "abdicate" its discretion and power to *review,* or to *decline to review,* a decision of a State Supreme Court under a Petition for Writ of Certiorari. Nor is there involved in the case at bar any federal constitutional question, or any sort of real federal question at all. Petitioners strained with all the ability of eminent counsel to find some federal question and could only come up with the suggestion that there was a question under the Full Faith and Credit Clause as to (1) whether the Supreme Court of Mississippi had constitutional power to *supersede* that done by Louisiana and (2) whether there was a violation of the Fourteenth Amendment when the Mississippi Supreme Court "rewrote" the deed and reservation in controversy. See page 3 of the Petition for Writ of Certiorari. A third suggestion by Petitioner on the

next page of their Petition for Writ of Certiorari inquires if the Rights of the United States, under the lease to the Atomic Energy Commission do not here demand certiorari in the public interest? This latter question requires no comment. There was not and is not here any question whatever of any right of said Commission, or the United States.

As to the first two of the so-called federal questions the Mississippi Supreme Court did not *"supersede"* or purport to disagree in any manner with that expressly done in Louisiana, but *followed* the actions and *decision* of the Louisiana District Court in its clear recognition of the total mineral reservation involved (See page A11 of the Petition, above mentioned). Petitioners are the parties who came into Court in Mississippi and sought relief that involved no state statute or constitutional or federal question at all. They asked for a construction of a deed which had already been construed, both by themselves, and by the State of Louisiana, all as clearly appears in the lucid decision of the Supreme Court of Mississippi, which Petitioners first sought to be reviewed here, and now seek to be held in suspense by this Court by its abstention from doing that which Petitioners sought here in the first place. Also, the charge that the Mississippi Supreme Court "rewrote" the deed and reservation in controversy is groundless. It merely adjudged the obvious meaning of the reservation.

As to the "Questions Presented" in the "Petition for Writ of Certiorari" (page 3 of that printed Petition), they involve only a decision relating to factual matters as to which, if Respondents should be required to answer, there has been no citation or argument that there is any Louisiana authority that would have called for any different result. The record shows, as reflected by the decision of the Mis-

sissippi Supreme Court (pages A1 through A35 of Appendix "A" to the Petition for Writ of Certiorari) that the Mississippi Court, followed the Louisiana precedents and procedures and actual decision in this matter whereby the ownership of *sulphur* and all *other minerals* by Hibernia in Liquidation was recognized by the Louisiana District Court in its very dealings with "Tatum," the predecessor of Petitioners, and was equally recognized by said Tatum in seeking and obtaining a lease on all minerals, after he had his surface deed.

As to paragraph (c), page 12 of the brief of Petitioners, it is not understood why there is citation of *Baggett* v. *Bullitt*, 377 U.S. 360, 12 L.ed. 2d 377. In that case there was argument, based on *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496, 85 L.ed. 971, that there should be abstention "where state tribunals were thought to be more appropriate for resolution of complex or unsettled questions of local law." But that argument is not pertinent here, since there are not any complex or unsettled questions of local law involved in the case at bar. No construction of a statute (either of Mississippi, Louisiana or the United States) is sought in this case. Petitioners just want a new trial in Louisiana, in the hope of a favorable decision—a hope that flies in the face of the several prior actions by the Louisiana District Court in dealing with Tatum himself (predecessor of Petitioners) as to the Louisiana liquidation of Hibernia as full owner of all the minerals, as above discussed and as discussed by the Supreme Court of Mississippi in its opinion (page A11, Appendix "A" to Petition for Writ of Certiorari).

In this Motion there is no constitutional adjudication involved, nor any federal question, nor any state statute. There is nothing here to evoke "abstention."

A reading of the Motion for Abstention here shows it has no mention of any basis for abstention other than the desire of Petitioners to have a new trial in another Court. So, Baggett v. Bullitt is not pertinent here and of no help to Petitioners.

Petitioners cite the annotation (paragraph (d), page 12) on "Discretion of federal court to remit relevant state issues to state court in which no action is pending," from 3 L.ed 2d 1827, and 94 L.ed. 879. The first of these annotations (94 L.ed. 879) pertains only to an action involving a federal question, which is foreign to the Motion for Abstention here. Also, it is evident there is no real federal question involved at all. This, because the case involves a simple (or complex, if one insists) matter of title to minerals in Mississippi lands, depending upon the construction of the language and intention of the parties to a deed. When Petitioners filed this suit in the Mississippi forum there was no hint of Federal Statute or Federal Constitution or of Louisiana Statute or law, or Louisiana Constitution being involved. Nor is there yet substantially pointed out any such question. No state statute, rule, ordinance or administrative order is challenged in any manner whatever in this cause, down to the present. In the latest of these annotations (3 L.ed. 2d 1827) the most pertinent sentences, perhaps, are as follows (from page 1830):

> "Questions purely federal in nature are not considered in disposition of a motion to remit. The doctrine of abstention is applicable only where there is an essential question of state law not answered by the state courts in reported opinions, and is not applicable where the question of state law is not subject to real doubt . . ."

In the case at bar the issues *have been determined* by the highest tribunal of the State (Mississippi), so there is no place for the doctrine of abstention. Likewise, if there is

any basis whatsoever to support a Petition for Writ of Certiorari here it can only be on the basis of some federal question, erroneously decided by the State Court. Federal questions present no ground for abstention by a Federal Court.

Petitioners have come here originally seeking Certiorari upon the alleged grounds (actually without support in the record) of federal questions. If there are no true federal questions presented then Certiorari of course will not lie. If federal questions only are presented then abstention has no place in the case. So, the very Petition for Writ of Certiorari here, on the basis of so-called or alleged federal questions, is a bar to any claim for abstention since no state statute is involved. Petitioners are "hoist on their own petard". They cannot seek relief on the sole statutory basis whereby they have the right to seek the *grace* of this Court to the extent of Certiorari to review the State Supreme Court, and at the same time deny that the basis of their Petition for Certiorari is the (alleged) presence of federal questions—*not* something concerning state law. In the case at bar there is no provision for review of the decision of the Mississippi Supreme Court by this Court *except* on the basis of the presence of *federal* questions. The reality of the absence of federal questions from the time of filing their Petition for Writ of Certiorari is what has set Petitioners grasping for some other straw after they realized their Petition for Certiorari was without foundation.

Nothing further is deemed necessary on the law relative to abstention, though Petitioners cite *majority* opinions and *dissenting* opinions of this Court indiscriminately on the question of abstention, all about situations wholly foreign to the simple land title question as to Mississippi lands here involved.

In subdivision (i) on page 20 of their brief, Petitioners first cite by name the two cases of *Government Employees* v. *Windsor*, 353 U.S. 364, 1 L.ed. 2d 894, and *Dombrowski* v. *Pfister*, ... U.S. ....., 14 L.ed 2d 22. Without explanation, they say there is "naught" in those cases conflicting with the position of Petitioners. With nothing more than that comment it may be said in reply that the trouble with this, and the other citations in the brief of Petitioners on the Motion for Abstention is that there is "naught" in any of their citations to *support* their contentions.

Next Petitioners cite some five (5) cases from the Louisiana decisions and one federal decision, all of which concern the Louisiana banking statutes but none of which are quoted or explained by Petitioners as to wherein they may be pertinent here. Respondents accordingly limit their response to saying that there is nothing in any of those cases to support Petitioners on their Motion. They just do not pertain in any manner to "abstention."

Next, in the last paragraph on page 20 of the brief on the Motion, Petitioners again illustrate their refusal to see what is plain to anyone who will look. They actually say that *Respondents*, the *defendants* below, did not see fit to introduce the petition and order made on December 30, 1937, and referred to in Petitioners' deed, which order was necessary to the validity of the deed, and say this was some "stratagem" voluntarily used by counsel for *Respondents* (defendants) and they are estopped thereby. This is rare indeed, for Petitioners to complain that counsel for defendants did not introduce that certain document needed by *Petitioners* (the Complainants) to make out their own case, but which would not be material to the case for defendants, but would only have aided their opponents, Petitioners here. Since Petitioners *failed to make out their case* (even as to *owning the surface* of the lands in controversy—and some 14,000 acres in addition, not yet in legal controversy), by

failing to introduce the petition and order of the Louisiana Court to support their deed, and so failed to prove any valid interest whatever in subject lands, they now complain that they are the victims of some "stratagem" that estops their opponents because the *defendants* did not obtain and introduce the evidence necessary to the case of *complainants*. Respondents are constrained to observe that this must be a type of argument seldom coming before this Court.

Next, Petitioners complain (page 21 of their brief) about what the Mississippi Supreme Court did, or failed to do, and again mention *one* of the several mineral reservations in the deed in question. All of which (again) has naught to do with this Court or with "abstention". It is rather directed to the merits, which will never be reached in this Court until after it is determined whether any Writ of Certiorari should issue.

Further, on page 22 of brief of Petitioners on the Motion for Abstention, they assume to recite as a fact their own idea as to some alleged appropriation of gravel by Petitioners from the lands in question. Of course this is as far from supporting any "abstention" theory as Petitioners could get. It concerns *facts* about Mississippi lands that only a Mississippi Court can properly determine. Since this question has already been presented to and determined by the Supreme Court of Mississippi, not involving any federal question, and it being the real bone of contention of Petitioners in their position in filing their Petition for Writ of Certiorari, Petitioners here make it evident that Certiorari is not appropriate (for lack of any real federal question) and the "abstention" doctrine can have no possible place to seek a Louisiana decision on the question of adverse possession and alleged appropriation of gravel from Mississippi lands which has been finally determined already by the Supreme Court of Mississippi.

On the final page of brief of Petitioners on their Motion for Abstention they merely repeat criticism of the decision of the Mississippi Supreme Court as being erroneous in the eyes of Petitioners, but plainly showing there is no reason for Certiorari by this Court and nothing whatever by way of basis in logic, reason, law or the cases to support the "abstention" theory, here belatedly advanced by Petitioners.

CONCLUSION

In conclusion it is pointed out, as might well have been done in the very beginning, that the law concerning land titles, and the ownership of real property is a matter *exclusively* subject to the law of and governed by the law of the state within which it is situated. Thus, it was indispensable that the question of title to minerals in, on or under Mississippi land be determined by the laws of the State of Mississippi. The law of the State of Mississippi in this particular case has been finally determined and settled by the decision of the Supreme Court of Mississippi in the case at bar. The law on this question is clear. In the case decided by this Court, of *United States* v. *Fox*, 94 U.S. 315, 24 L.ed. 192, the law was expressed thus:

> "It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. McCormick v. Sullivant, 10 Wheat 202. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal Government. The title and modes of disposition of real property within the state whether inter vivos, or testamentary, are not matters placed under control of federal authority. Such control would be foreign

to the purposes for which the Federal Government was created, and would seriously embarrass the landed interests of the State."

In that case, under the law of New York as to land titles, an attempted devise of lands to the *Government of the United States* was held to be void under the New York statute which limited the right to devise property to natural persons and to corporations created under the laws of the State.

In the case at bar the title to this real property in Mississippi has been determined by the law of Mississippi and by final decision of the Supreme Court of Mississippi. Neither this Court by decision, nor any law of Louisiana may interfere with the title question as to Mississippi lands thus determined by the law of Mississippi. This alone is conclusive against any thought of a trial in Louisiana to determine title to Mississippi lands, contrary to the decision of the Supreme Court of Mississippi.

Accordingly, the said Petition for Abstention should be denied, and the Petition for Writ of Certiorari, likewise; it having no real federal question basis.

Respectfully,

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CERTIFICATE OF SERVICE

I, John C. Satterfield, one of the attorneys for Respondents herein and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served printed copies of the foregoing Reply Brief of Respondents upon Motion for Abstention, on the Petitioners in the manner following:

1. By delivering or causing to be delivered two copies to Garner W. Green, Esq., at the office of Green, Green & Cheney, Attorneys at Law, 800 Electric Building, Jackson, Mississippi.

2. By mailing 1 copy thereof in a duly addressed envelope by United States Mail, postage prepaid, to James Simrall, Jr., Esq., Professional Building, Hattiesburg, Mississippi.

3. By mailing 1 copy thereof in a duly addressed envelope, with postage prepaid, to M. M. Roberts, Esq., Citizens Bank Building, Hattiesburg, Mississippi.

4. By mailing 1 copy thereof in a duly addressed envelope by United States Mail, postage prepaid, to Robert B. Rainold, Esq., Baldwin, Haspel, Molony, Rainold & Meyer, 225 Baronne Street, New Orleans, Louisiana.

I further certify that I have caused to be mailed, postage prepaid, forty (40) printed copies thereof to the Clerk, United States Supreme Court, Washington, D. C., 20530.

This the ..... day of October, 1965.

.....

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